Supreme Court, U.S.
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No. 97-1773

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

THEIS RESEARCH, INC.

Petitioner

v.

OCTEL COMMUNICATIONS CORPORATION AND NORTHERN TELECOM INC.

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

OPPOSITION OF RESPONDENT NORTHERN TELECOM INC. TO PETITION FOR WRIT OF CERTIORARI

ROBERT NEUNER
RICHARD S. CLARK*
HENRY TANG
BAKER & BOTTS, L.L.P.
30 Rockefeller Plaza
New York, New York 10112
(212) 408-2500
Attorney for Respondent Northern Telecom Inc.

*Counsel of Record

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Respondent Northern Telecom Inc. ("NTI") respectfully Opposes the Petition for Writ of Certiorari of Petitioner Theis Research, Inc. ("TRI"). In opposing, NTI notes that TRI does not here appeal or otherwise challenge the holding below that none of NTI's products infringes either of the TRI patents that are the subject of TRI's Petition (i.e., the '436 and '817 patents).[1] NTI nonetheless opposes the grant of TRI's Petition, both as a declaratory judgment plaintiff involved in an actual and justiciable controversy regarding the validity of the '436 and '817 patents, and as an active participant and firm believer in the United States patent system.

COUNTERSTATEMENT OF THE CASE

In its Petition, TRI makes a number of misstatements and omissions that not only would bear on the issues that would be before the Court were certiorari to be granted, but when corrected render inappropriate the grant of certiorari.

In this regard, TRI purports to characterize itself and its founder Peter Theis as innovators in the telecommunications field, that inevitably "would end up having to fight the progeny of AT&T and their major manufacturers/suppliers to

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[1] The jury verdict of non-infringement of the '817 patent by NTI was not appealed to the Federal Circuit. The jury verdict of non-infringement of the '436 patent by NTI was appealed to and affirmed by the Federal Circuit (Appendix to the Petition, pages A-11 to A-12), but was not further challenged here.

vindicate the rights that it holds under Theis' patents." (Petition, p. 4). TRI further represents to the Court that the Respondents "later built upon the underlying technology that Theis invented," and that this underlying technology was "marketed with success" by Theis. (*Id.*)

In actual fact, the Theis primitive tape-recorder-based technology has never proved successful in any marketplace. Theis' enterprises have all either failed or become essentially dormant, not because of AT&T or any other competitor,[2] but because the industry passed them by without so much of a nod. Indeed, Theis' failures, including the "absolute disaster" (Petition, p. 5) of Theis' ConMode I, are not counterbalanced by anything in the record below.

With respect to Theis' disastrous ConMode I, TRI represents that "[n]one [of the ConMode I's sold to Montgomery Ward, J.C. Penney, Household Finance, and Market Facts] ... was placed in use before February 4, 1993" (one year before the initial patent application). (*Id.*). In actual fact, the history of ConMode I was litigated to an unhappy end by Theis in *In re Theis*, 610 F.2d 786 (C.C.P.A. 1979). There the Court of Appeals not only found that ConMode I was on sale prior to the critical date, but that they were actually delivered to Market Facts and used before the

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[2] TRI's president conceded that when it was decided to cease trying to sell Theis' ConMode products "competition was not a factor in the decision."

critical date. ("[P]rior to the critical date ... Market Facts and others were using the system;" 610 F.2d at 793-4). TRI's contrary representation to this Court is lamentable.

TRI also contends that ConMode I was "inoperative," and that ConMode I was not therefore a proper basis for a holding of patent invalidity with respect to the '436 and '817 patents. Here TRI not only misstates the facts, but would reinvent the historical record and the final disposition in *In re Theis*. There, in holding that Mr. Theis was not entitled to a patent on his ConMode I, the Court of Customs and Patent Appeals flatly rejected Theis' inoperativeness argument, i.e.:

> Appellant also relies on the theory that the bar of § 102(b) should not apply because, at the time prior to the critical date when Market Facts and others were using the systems, the systems were "inoperative." ...
>
> We find this argument wanting because appellant has failed to show that the *claimed invention* was inoperative. ...
>
> We find it difficult to imagine that appellant would demonstrate an inoperative system at a trade show and elsewhere in an effort to drum up business.

(610 at 794; emphasis the Court's). Now, almost twenty years after the decision in *In re Theis*, TRI would here treat it as a nullity and have this Court undertake a *de novo* review.

TRI's characterizations of the patent system as being flawed, in that "commercially valuable patents of independent inventors have become bait for litigation" (Petition, p. 17), must also be viewed in the light of the record below.

Bait indeed. As noted above, Theis' attempts to sell his ConMode machines were anything but successful. Petitioner TRI was formed not to market Theis' products, but to threaten the manufacturers and users of modern day telecommunication equipment with costly litigation unless they agreed to take licenses under Theis' patents. While purporting to offer licenses, TRI consistently refused to explain how the Theis' tape recorder-based patents were related at all to modern technology. TRI's strategy included threats against not only equipment suppliers such as NTI, but against their user customers, such as Bell Atlantic and Ameritech.

It was TRI's attacks on the customers of NTI and NTI's co-plaintiff in the district court, Octel Communications, Inc. ("Octel"), that proved to be its undoing. First, after TRI made outright threats against Octel's customer Ameritech (again without explaining the basis for its allegations), Octel brought a declaratory judgment action against TRI in the Northern District of California (the court that ultimately tried the present case). Octel sought a declaration of invalidity and non-infringement of three TRI patents. TRI answered and counterclaimed

alleging infringement of seven patents (the original three plus four new ones). In March, 1993, less than five months after it filed its counterclaim, TRI, unable to pass even a red-face test as to the bases for many of its infringement allegations, stipulated to the dismissal, with prejudice, as to three of the seven counterclaimed patents.

At the same time, and in what can only be described as a litigation ploy to avoid what it saw as an unwelcome focus on the merits in the California action, TRI brought suit in the Eastern District of Virginia (home of the "rocket docket") against Bell Atlantic and its family companies. TRI now alleged that six of its patents (the three remaining patents in California, and three new ones) were infringed by the voice mail and automatic billing telephone services offered by Bell Atlantic. The underlying systems for these services were supplied, *inter alia*, by NTI and Octel, and both were called upon by Bell Atlantic to defend and, if necessary, indemnify. At this juncture, TRI purportedly was seeking damages based upon the revenues generated from the use of NTI's and Octel's products, and hence was asserting a damage base of literally billions of dollars. TRI demanded a jury trial hopeful that the risk of an accelerated David versus Goliath case before a jury would prove too risky for NTI and Octel.

This is the same TRI that now complains it was victimized by our jury system.

Since the California action was already well underway, NTI brought its own action in California, seeking a declaration of invalidity of non-infringement as to the six patents asserted by TRI against Bell Atlantic in Virginia. Again TRI counterclaimed, alleging infringement of all six patents against NTI as well as NTI's (and Octel's) Pacific Telesis Group customers.

The Virginia Court was not blind to TRI's litigation tactics, and Magistrate Judge (now Judge) Brinkema advised that she was prepared to issue a recommendation that the Virginia action be stayed pending resolution of the California actions. Faced with this reality, TRI stipulated to the stay; whereupon the Octel and NTI actions in California were consolidated for trial.

The consolidated California action did not go well for TRI. Of the six patents asserted, one (the '255 patent) was held invalid on summary judgment. Another (the '416 patent) was held invalid as to the apparatus claims (a renewed motion for summary judgment of invalidity of the method claims is presently before the district court). Still a third patent (the '635 patent) was held on summary judgment not to be infringed by Octel.

The three remaining patents, i.e., the '436 and '817 patents that are the subject of the present Petition, as well as the '647 patent, were then tried to the jury. The jury held that all three patents were invalid, and that only the '436 and '817

patents were infringed by a subproduct of Octel. The district court denied TRI's motions under Fed. R. Civ. P. 50 *except* that it vacated the jury's finding of invalidity as to the '647 patent. Final Judgment was entered on January 2, 1996.

TRI appealed most facets of the Final Judgment to the Court of Appeals for the Federal Circuit. This appeal included the invalidity and non-infringement findings as to the '436 patent, the invalidity (but not the non-infringement) finding as to the '817 patent, the summary judgment invalidity finding as to the '255 patent, and the non-infringement finding as to the '635 patent. The Court of Appeals affirmed the district court in all respects, including NTI's and Octel's cross-appeals.

In its Petition, TRI purports to raise only two of the issues decided below — the findings of invalidity of the '436 and '817 patents. As to these two patents, the lower court findings of non-infringement (as to all of NTI's products and most of Octel's products) are not challenged.

Again, It is this background that TRI's self-characterization as "bait for litigation" must be viewed and evaluated.

Also, far from attacking our jury system as it now does, in the district court (both in California and Virginia) TRI sought at every turn to place virtually every issue, whether it be of fact or law, before a jury. In the district court below, TRI demanded and received a jury. In the Virginia

action brought by TRI against NTI's and Octel's Bell Atlantic customers, a jury was demanded by TRI.

TRI's arguments before this Court directed to the propriety of and weight to be accorded a jury determination of patent invalidity are particularly troublesome when compared with the record. Here NTI urges that "Octel and Northern Telecom relied heavily on the 'expert' opinions of Dr. Larky." (Petition, page 10). TRI then builds upon this reference to expert testimony with the following broadbrush characterization:

> As a practical matter, the "substantial evidence" standard of review is no standard at all in these cases. Parties will always be able to find hire gun "expert" witnesses to put on the stand. The infringer of a commercially valuable patent will always find it worth investing in "expert" witnesses. Inevitably, the "evidence" of the "expert's" opinion will always be found to satisfy "'that minimum quantum of evidence from which a jury might reasonably afford relief.'" ... This truth is demonstrated in the decision below by the Federal Circuit's liberal reliance on the opinions of Dr. Larky in affirming the obviousness verdicts as to the '436 and '817 patents.

(*Id.*, page 23).

In the district court, however, TRI played a strikingly different tune. Faced there with NTI's motion for summary judgment of invalidity of the '436 and '817 patents, TRI *successfully* argued as follows:

> This motion presents the opinion of Northern Telecom's expert, Dr. Larky, against the opinion of TRI's expert, Dr. Hoff, about what the Shepard reference teaches to one skilled in the art. This is a classic fact question which renders summary judgment wholly inappropriate. Northern Telecom's motion should be denied. *The jury must be permitted to determine which expert it believes.*

(TRI Opposition to NTI's Motion, page 1; emphasis added). Not only did the jury clearly believe Dr. Larky, but a review of the detailed discussions of the prior art by the district court (in denying TRI's motions for JMOL) and the Court of Appeals (in affirming the holding of invalidity) explained why Dr. Larky *was right*. (*See*, e.g. Appendix to TRI's Petition, pages A-3 to A-7; A-12 to A-14; C-1 to C-4; D-1 to D-3).[3]

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[3] The detailed discussions of the prior art by both of the courts below also bears directly upon TRI's repeated contention that "all of the prior art was before the Patent and Trademark Office." The PTO

(continued...)

Even when it came to claim construction, since held by this Court in *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 116 S.Ct. 1384 (1996), to be an issue of law for the sole determination by the court, TRI consistently and vigorously urged that the jury, not the court, should be the final arbiter as to disputed claim terms. As expressly noted by the District Court:

> TRI argues that in light of *Markman v. Westview*, 116 S.Ct. 1384 (1996), the court is required to resolve disputes concerning the construction of claim terms and thus must now construe certain terms which were submitted to the jury for interpretation. *Markman* does make clear that claim interpretation is an issue for the court. However, TRI waived any claim of error based upon the submission to the jury of disputes pertaining to the meaning of claim terms. It argued throughout the case that the construction of certain terms involved questions of fact and had to be submitted to the jury. It did not object to the court's

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[1](...continued)
Examiner simply never asserted the prior art in the manner explained by the courts below, and as it was presumably understood and applied by the jury. (*Id.*)

> instruction number 14 which gave to the jury the task of interpreting certain terms on the ground that interpretation was the province of the court. Failure to specifically object waives an objection. Fed. R. Civ. P. 51, *Hammer v. Gross*, 932 F.2d 842, 847 (9th Cir. 1991), *cert. denied*, 502 U.S. 980, 112 S.Ct. 582 (1991). Therefore, the court's task in this post trial motion is to review the issue of claim construction *de novo* and then review the jury's verdict to determine whether there is substantial evidence to support the verdict using the correct claim construction.[4]

(November 14, 1996, Order on TRI's Motion for a New Trial, page 2).

Simply put, TRI can hardly be characterized as an unwitting "bait" placed at the mercy of a capricious jury system. Rather, it was TRI that cast the bait, and it is TRI that must now live with what little it managed to reel in.

ARGUMENT

As it is required to do under Supreme Court Rule 14, TRI's Petition purports set forth at the beginning four "questions presented," for review. Unfortunately, the Petition

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[4] Thus TRI's waiver notwithstanding, the district court did construe the claims pursuant to *Markman*. *See also infra*, pp. 19-20, regarding TRI's failure to explain why this construction was wrong.

itself digresses into multi-faceted musings of what TRI perceives to be weaknesses in our jury system, culminating in the following invitation to this Court:

> Either way, the issues are fundamental—
>
> - the judiciary vis-a-vis the Patent and Trademark Office
> - the Federal Circuit vis-a-vis the trial courts
> - judges vis-a-vis juries
>
> —and should be resolved by this Court.

(Petition, page 18).

In opposing TRI's Petition, NTI will not undertake to respond to TRI's hypothetical and philosophical queries. Rather, NTI will limit its opposition by briefly pointing out that the four issues purportedly presented are not in fact presented by this case, and hence do not merit review by this Court.

1. **TRI's Question One:**

   Where all of the prior art was before the Patent and Trademark Office, should a jury be invited and empowered to disregard the Office's determinations, substituting its own opinions of obviousness and anticipation (and those of an infringing party's "expert") for the Office's determinations? Or should the trial court have

sustained the Office's determinations absent clear error or an abuse of discretion?[5]

This question misstates the law and the facts below. Far from being "invited and empowered to disregard the Office's determinations" and "substituting its own opinions of obviousness and anticipation," the jury in the district court was instructed, with TRI's concurrence, to adhere to longstanding and heretofore unchallenged precedent. As held by the district court:

> TRI correctly notes that "obviousness" is a question of law. However, "obviousness is a legal determination that may be submitted to the jury with proper instruction. *In re Hayes Microcomputer Products Patent Lit.*, 982 F.2d 1527, 1539 (Fed. Cir. 1992), *TRI did not*

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[5] As noted, *supra* page 9, "all of the prior art" was not considered and applied by the PTO Examiner in the same manner as in the courts below. Indeed, TRI would have NTI and Octel effectively bound by the findings made by the Examiner in then-secret, *ex parte* proceedings between Theis and the PTO. This plainly would deprive NTI of a full and fair trial on all of its defenses of invalidity. *See* 35 U.S.C. § 282 ("The following shall be defenses in any action invoking the validity or infringement of a patent ... (2) Invalidity ... on any ground specified ... [*inter alia* in 35 U.S.C. § 102 or § 103]); *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 329 (1971) ("Some litigants — those who have never appeared in a prior action — may not be collaterally estopped ... [t]hey have never had a chance to present their evidence and arguments on the claims").

object to the court's instructions on the "obviousness" question.

(Nov. 14, 1996 Order on Defendants' Motion for Judgment as a Matter of Law that Claims 1 and 10 of the '436 Patent are Valid. Emphasis added.)

The instructions submitted to the jury, and not objected to by TRI, clearly informed the jury that it was not, as asserted by TRI, "empowered to disregard the Patent and Trademark Office's determinations" to grant Theis' patents. The instructions to the jury included the following:

> It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not.
>
> * * *
>
> Because patents are presumed to be valid, Octel and Northern Telecom have the burden of proving invalidity by clear and convincing evidence. ... if Octel and Northern Telecom do not meet their burden of proving invalidity, then you must find that the claim is valid...
>
> * * *
>
> All patents issued by the Patent and Trademark Office are presumed to be valid. Therefore, as I explained before, one who

> challenges a patent claim's validity has the burden of proving invalidity by clear and convincing evidence.
>
> * * *
>
> Octel and Northern Telecom claim that all of the asserted claims are invalid because they were obvious. TRI and Mr. Theis deny that those claims were obvious. Octel and Northern Telecom must prove obviousness by clear and convincing evidence.

Also as noted *supra.*, TRI's latter day disparagement of "an infringing party's 'expert'" pales when viewed in light of TRI's argument in the district court that

> "[t]his [anticipation of the '437 and '817 patents] is a classic fact question ... [t]he jury must be permitted to determine which expert it believes."

(TRI opposition to NTI's motion for summary judgment of invalidity of the '436 and '817 patents).

In fact, TRI's above-quoted position was consistent with this Court's recognition that "[t]he question whether an improvement requires more mechanical skill or the exercise of the faculty of invention, is one of fact ... to be left to the jury." *Thompson Spot Welder Company v. Ford Motor Company*, 265 U.S. 445, 446 (1924). Having correctly relied upon the established law in the courts below, TRI is uniquely

unqualified to raise a new and contrary ground for review in its Petition. *See Delta Air Lines, Inc. v. August,* 450 U.S. 346, 362 (1981) ("[t]hat question was not raised in the Court of Appeals and is not properly before us").

In sum, in order to comport with the law as applied and the facts as found in the district court, and to be "expressed concisely *in relation to the circumstances of the case*" (S.Ct. R. 14, emphasis added), TRI's first "question presented" would read as follows:

> Is the longstanding practice of submitting issues of patent validity to a jury to be disturbed in a case where (1) the jury was properly instructed as to the law, including the presumption of patent validity and the heavy burden placed upon a party alleging invalidity, (2) the patentee did not object to the submission of the validity issue to the jury, and (3) the patentee expressly urged that the jury should "determine which expert it believes?"

So phrased, the first question presented is unworthy of this Court's review.

2. **TRI'S Question Two:**

> **As patent validity is ultimately a question of law, where all of the prior art was before the Patent and Trademark Office, and the Office determined**

that the invention was neither obvious nor anticipated, should the Federal Circuit review de novo (a) a jury's verdict overturning the determination of the office and (b) the trial court's denial of judgment as a matter of law?[6]

In seeking *de novo* review of the jury's verdict, TRI purports to rely upon and seek an extension of *Markman v. Westview Instruments, Inc., supra.* There it was held that the issue of claim construction was one of law, incapable of determination by a jury.

Now TRI would have this Court extend *Markman* to invalidity determinations.[7]

In this regard, it is respectfully submitted that this Court's decision in *Markman* to place patent claim construction outside the ambit of the Seventh Amendment guarantee was not lightly made, and was based upon

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[6] *See supra*, pages 9 fn 3 and 12 fn 5, regarding TRI's reference to "all of the prior art." Moreover, would TRI urge *de novo* review only where all of the prior art was considered before the PTO; most of it; some of it; none of it?

[7] TRI benignly leaves it to this Court to decide how to accomplish this end, e.g. take it away from the jury altogether, change the standard to "clear error," or let the jury decide and then ignore its findings in a "*de novo*" review. Significantly, none of these options include what TRI expressly sought and obtained in the district court, namely on the issue of validity "[t]he jury must be permitted to determine which expert it believes."

considerations that apply uniquely to claim construction — and not to issues of patent validity.

For example, although this Court sought but found little or no guidance from the common law on jury consideration of claim construction, 116 S.Ct. at 1393, such was not the case with early "so-called novelty actions" (analogous to present day validity determinations) which the Court noted were submitted to juries. (*Id.* at 1390).

Moreover, claim construction was noted by this Court to be "a special occupation ... [wherein] [t]he judge, from his training and discipline, is more likely to be right, in performing such a duty, than a jury can be expected to be." (*Id.* at 1395). This was found to be especially true in that a patent claim is in the nature of a document; it therefore being "doubtful" that "credibility determinations" as to expert testimony would be key, and in any event "subsumed within the necessarily sophisticated analysis of the whole document ...." (*Id.* at 1393).

This is to be contrasted with this Court's statements in *Markman* with respect to expert testimony generally, where the jury is entrusted by the Seventh Amendment with the "capability to evaluate demeanor ... sense the 'mainsprings of human conduct' ... or to reflect community standards." (*Id.*).

This was, of course, the exact argument that TRI made in the district court, i.e.: that as to the validity of the '436 and

'817 patents, "[t]he jury must be permitted to determine which expert it believes."

Consistent with this Court's observations in *Markman*, and TRI's argument in the district court, the determination of obviousness *requires* that underlying factual inquiries be made, including the scope and the content of the prior art, the differences between the prior art and the claimed invention, and the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1 (1966). *See also Thompson supra* ("the question [of inventive contribution] is one of fact ... to be left to the jury"). Apparently TRI would have this Court place these purely factual inquiries outside the ambit of the Seventh Amendment, again without suggestion as to why this is necessary or how it could be accomplished in a manner consistent with the principles and policies underlying the Seventh Amendment.

In the circumstances, TRI's second "question presented" must also be restated if it is to be expressed in compliance with Supreme Court Rule 14, as well as consistently with the recent holding by this Court in *Markman*, i.e.:

> 2. Should a patent owner be heard to argue that the Seventh Amendment guarantee does not apply to issues of patent validity, particularly where the determination of validity requires factual inquiries and where the patent owner expressly argued in the

district court that the validity issue turned on the credibility of expert testimony?

Such a question does not merit the grant of certiorari.

3. **TRI'S Question Three:**

Should the Federal Circuit review the construction of patent claims de novo in light of the specification and claims?

As to this purported question, TRI makes only the bare assertion that "[i]n this case, the trial court misconstrued the patent claims." (Petition, page 28). TRI does not favor this Court with even a hint as to what claims were misconstrued, how they were misconstrued, or indeed how claim construction bears at all on the sole issue presented in the Petition — namely the validity of the '436 and '817 patents. Indeed, TRI declines even to mention the detailed undertaking by the district court in compliance with its *Markman* obligation (*See* e.g. pages E-1 through E-6 of the Appendix to TRI's Petition, wherein the district court construed claims 1 and 10 of the '436 patent as a matter of law).

By urging in this Court that the claims should have been construed *de novo* by the Court of Appeals, TRI poses a question that is at best in violation of Supreme Court Rule 14, and at worst purely hypothetical. Properly stated, TRI's third question should read:

Is any issue regarding claim construction worthy of Supreme Court review in a case where the petitioner does not explain what, if any, claim was misconstrued by the district court?

4. **TRI's Question Four:**

Should a patent be held invalid under the "on sale" bar of 35 U.S.C. § 102(b) where the invention as a whole was not "fully completed" one year before filing of the patent application? For the purpose of obviousness and anticipation determinations, should an inventor's own work be classified as "prior art" by virtue of the "on sale" bar of 35 U.S.C. § 102(b) where the work as a whole was not "fully completed" with respect to the patented invention?

(Petitioner alternatively requests grant and consolidation with *Pfaff v. Wells Electronics, Inc.*, No. 97-1130, or hold pending the Court's decision in *Pfaff*.)

TRI's fourth and last question is discussed at page 29 of its Petition. There, in a mere two sentences and a footnote, TRI argues that the present case "presents the same basic question" as is presented in *Pfaff v. Wells Electronics, Inc.*, No. 97-1130, in that:

> In *Pfaff*, the product was not complete because it had not been built. In this case, the ConMode I was not complete because it was inoperable.

As noted *supra.*, it is almost twenty (20) years since the Court of Customs and Patent Appeals firmly and finally rejected the argument that ConMode I was inoperable, i.e.:

> Appellant also relies on the theory that the bar of § 102(b) should not apply because, at the time prior to the critical date when Market Facts and others were using the systems, the systems were "inoperative."
>
> * * *
>
> We find this argument wanting because appellant has failed to show that the *claimed invention* was inoperative.
>
> * * *
>
> We find it difficult to imagine that appellant would demonstrate an inoperative system at a trade show and elsewhere in an effort to drum up business.

In re Theis, 610 F.2d at 793-94.

Whatever facts and issues may be presented in *Pfaff*, *In re Theis* takes away TRI's sole stated basis as to any possible similarity. Moreover, once the "on sale" issue as to ConMode I was properly and finally decided in *In re Theis*,

it could not *and in fact was not* relitigated in the district court below. ConMode I was conceded by TRI to be prior art, and the '436 and '817 patents were held invalid, *inter alia*, as being obvious in view of the prior art ConMode I device. It is simply too late now to ask this Court whether ConMode I "should ... be classified as 'prior art'." *Adickes v. S. H. Cress & Co.*, 398 U.S. 144, 147 n. 2 (1970) (The Supreme Court will not ordinarily consider "issues neither raised before nor considered by the Court of Appeals").

TRI's "fourth question," like its predecessors, is not appropriate for Supreme Court review.

CONCLUSION

It is respectfully submitted that TRI's Petition be *denied* in all respects.

Respectfully submitted,

Robert Neuner
Richard S. Clark*
Henry Tang
Baker & Botts, L.L.P.
30 Rockefeller Plaza
New York, New York 10112
(212) 408-2500
Attorneys for Respondent
Northern Telecom Inc.

May 27, 1998
*Counsel of Record
150978